



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

February 17, 2023
SPR23/0329

Michael Kaneb, Esq.
Records Access Officer
Office of the Governor
State House
Boston, MA 02133

Dear Attorney Kaneb:

I have received the petition of Jonathan Gerhardson appealing the response of the Office of the Governor (Office) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On February 14, 2023, Mr. Gerhardson requested “[a]ll public records requests and associated correspondence, fee assessments and/or waivers and responsive documents related to all records requests submitted to Governor Healey’s office by or on behalf of WGBH Boston between Jan[.] 1, (or her first day as governor) and today, Feb. 13, 2023.”

In a February 15, 2023 response, the Records Access Officer for the Office of the Governor informed Mr. Gerhardson that:

By law, records held by the Office of the Governor are not subject to the Massachusetts public records law. *See Lambert v. Executive Director of the Judicial Nominating Council*, 425 Mass. 406, 409 (1997). . . .

This Office has no documents that are responsive to your request.

Unsatisfied with the Office’s response, Mr. Gerhardson petitioned this office and this appeal, SPR23/0329, was opened as a result.

The Supervisor is statutorily empowered with the authority to determine the public record status of government records. G. L. c. 66, § 10. “Public records” is broadly defined to include all documentary materials or data, regardless of physical form, made or received by any officer or employee of any department of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26). In examining this definition, and the separation of powers doctrine, the Supreme Judicial Court has concluded that the Public Records Law does not apply to records of

the Office. Lambert, 425 Mass. at 409; see also Mass. Const. Pt. 1, Art. 30 (separation of powers).

Also, please be advised that in a 2017 decision from the Attorney General's Office (AGO) regarding a similar matter, the AGO concluded that "... documents in the possession of the Governor or the Governor's Office are not records that must be disclosed under the Public Records Law." See AGO's November 17, 2017 letter regarding SPR17/0271 (Determination of the Supervisor of Records (March 15, 2017)).

Conclusion

Where the records of the Office have been determined to be outside of the Public Records Law, I am unable to assist Mr. Gerhardson in this matter. Therefore, I will now consider this administrative appeal closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first name "Manza" being more prominent and the last name "Arthur" following in a similar style.

Manza Arthur
Supervisor of Records

cc: Jonathan Gerhardson
Olivia Rolnik